

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2002 OF 2016 (O&M)

DATE OF DECISION:17.3.2016

CHAND BALA

..Petitioner

VS.

SUNIL DUTT AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Mohd. Yousaf, Advocate
for the petitioner.

DARSHAN SINGH, J. (ORAL)

1) The present revision petition has been preferred against the order dated 01.03.2016 passed by the learned Civil Judge (Junior Division), Ambala, whereby the application moved by the petitioner for examination of Yash Pal Sharma, Dr. Sanjay Mittal, Amarjit Singh, Sh. Rajinder Berry and Record Keeper of Sub-Registrar, Jalandhar by issuance of the commission, has been dismissed.

2) Learned counsel for the petitioner contended that the aforesaid witnesses are residing at Jalandhar which is at a distance of more than 150 kilometers from Ambala. He contended that the aforesaid witnesses are the material witnesses. They should be examined by the appointment of the Local Commissioner as they are unable to attend the Court at Ambala.

3) I have duly considered the aforesaid contentions. Order 26 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') reads as under:-

***“1. Cases in which Court may issue
commission to examine witness-Any Court may in any
suit issue a commission for the examination on***

interrogatories or otherwise of any person resident within the local limits of its jurisdiction, who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

[Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation.-- The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.]”

4) The aforesaid order provides that the Court may issue a Commission for examination of any person, resident within the local limits of its jurisdictions who is exempted under the CPC from attending the Court or who is suffering from sickness or infirmity and due to that reason is unable to attend the Court. It is further provided that a Commission shall not be issued unless the Court, for reasons to be recorded, thinks it necessary to do so.

5) In the instant case, learned counsel for the petitioner has simply stated that the aforesaid witnesses are residing at Jalandhar which is at a distance of 150 kilometers from Ambala, which is not sufficient to attract the provisions of Order 26 Rule 1 CPC. There is no plea of the petitioner that the aforesaid witnesses are unable to attend the Court due to sickness or infirmity. Thus, the learned trial Court has rightly declined the request of the petitioner and the impugned order does not suffer from any illegality.

6) Resultantly, the present revision petition being without any merit, is hereby dismissed.

March 17, 2016

SwarnjitS

**(DARSHAN SINGH)
JUDGE**